

December **9<sup>th</sup>** 2016



# The 2nd Proceeding

## "Indonesia Clean of Corruption in 2020"



**"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"**



**IMAM AS SYAFEI BUILDING**  
Faculty of Law, Sultan Agung Islamic University  
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

**UNISSULA PRESS**

ISBN. 978-602-1145-41-8



December **9<sup>th</sup>** 2016

# **The 2nd Proceeding**

**"Indonesia Clean of Corruption in 2020"**

**"Comparative Law System of Procurement of Goods  
and Services around Countries in Asia, Australia and Europe"**

**IMAM AS SYAFEI BUILDING**

Faculty of Law, Sultan Agung Islamic University  
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

Diterbitkan oleh :  
**UNISSULA PRESS**

**ISBN. 978-602-1145-41-8**



## **The 2nd Proceeding**

### **"Indonesia Clean of Corruption in 2020"**

"Comparative Law System of Procurement of Goods  
and Services around Countries in Asia, Australia and Europe"

#### **Reviewer:**

Prof. Dr. H. Gunarto, S.H., S.E., Akt., M.Hum

Dr. H. Jawade Hafidz, S.H., M.H.

Dr. Hj. Sri Endah Wahyuningsih, S.H., M.Hum

Dr. Hj. Anis Mashdurohatun, S.H., M.Hum

Dr. Latifah Hanim, S.H., M.Hum., M.Kn

Dr. H. Ahmad Khisni., S.H., M.H

#### **Editor :**

Dr. Amin Purnawan., S.H., CN., M.Hum

M. Abdul Hadi., SE

**Hak Cipta © 2016, pada penulis**

Hak Publikasi pada penerbit UNISSULA PRESS

Dilarang memperbanyak, memperbanyak sebagian atau seluruh isi dari buku ini dalam bentuk apapun, tanpa izin tertulis pada penerbit.

Hal i-xiv, 1-980

**Cetakan Pertama Tahun 2017**

**Penerbit UNISSULA PRESS**

Jl. Raya Kaligawe Km. 4 Semarang 50112


PO BOX 1054/SM,

Telp. (024) 6583584, Fax. (024) 6594366

**ISBN : 978-602-1145-41-8**



### INFORMATION OF THE CONFERENCE AND CALL PAPER



**UNISULA**


**9**  
December  
2016

# International Conference and Call for Paper

*"Indonesia Clean of Corruption in 2020  
Comparative Law System of Procurement of Goods  
and Services around Countries  
in Asia, Australia and Europe"*

**FACULTY OF LAW**  
Sultan Agung Islamic University


**IMAM AS SYAFELI BUILDING**  
Faculty of Law  
Sultan Agung Islamic University  
Jalan Raya Kaligawe, KM. 4  
Semarang, Indonesia




**Ir. Agus Rahardjo, MSM**  
*Chairman of the Corruption Eradication Commission (KPK) Indonesia*

**KEYNOTE SPEAKER:**  
**Ir. Agus Rahardjo, MSM**  
*Chairman of the Corruption Eradication Commission (KPK) Indonesia*


**SPEAKERS**




**Prof. Simon Buh**  
*School of Law, University of Sydney, Australia*




**Prof. Dr. Rohini Shrivastava**  
*The Dean of Faculty of Law, Urdara University, Sains Islam, Malaysia*




**Siti Marjan Malik FSR**  
*Vrije Universiteit, Amsterdam*



**Prof. Dr. Hermawan S.H., LL.M**  
*Professor of Faculty of Law, Indonesia Islam University*



**Dr. H. Juwade Haidir S.H., M.H**  
*The Dean of Faculty of Law, Sultan Agung Islamic University*



**Drs. Mubli, S.H., M.Ads**  
*Director of the Research Center for the Study of Anti-Corruption, Gadjah Mada University*

**Moderator:**  
**Dr. H. Mubli, S.H., M.Ads**  
*Director of the Research Center for the Study of Anti-Corruption, Gadjah Mada University*



**UNISSULA**  
UNIVERSITAS ISLAM SEMARANG

**FACULTY OF LAW**  
Sultan Agung Islamic University

# International Conference and Call for Paper

## "Indonesia Clean of Corruption in 2020"

### Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe



**KEYNOTE SPEAKER**  
**Ir. Agus Rahardjo, MSM**  
*Chairman of the Corruption Eradication Commission (KPK), Indonesia*



**IMAM AS SYAFI BUILDING**  
Faculty of Law, Sultan Agung Islamic University  
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia



**Prof. Simon Bell**  
School of Law, University of Western Australia



**Prof. Dr. Rahimi Shigam**  
Vice Dean of Faculty of Law, Universiti Sains Islam Malaysia



**Dr. Malikah Melek Foor**  
Vrije Universiteit Amsterdam



**Prof. Dr. Ningsihanto S.H.,LLM**  
Professor of Faculty of Law and Legal Science



**Dr. H. Aswadi Haidid S.H., M.H.**  
The Dean of Faculty of Law, Sultan Agung Islamic University



**Drs. Madi S.H., MA**  
Dean of Faculty of Law, Sultan Agung Islamic University

**SPEAKERS:**

1. Prof. Simon Bell  
School of Law, University of Western Australia

2. Prof. Dr. Rahimi Shigam  
Vice Dean of Faculty of Law, Universiti Sains Islam Malaysia

3. Dr. Malikah Melek Foor  
Vrije Universiteit Amsterdam

4. Prof. Dr. Ningsihanto S.H.,LLM  
Professor of Faculty of Law and Legal Science

5. Dr. H. Aswadi Haidid S.H., M.H.  
The Dean of Faculty of Law, Sultan Agung Islamic University

6. Drs. Madi S.H., MA  
Dean of Faculty of Law, Sultan Agung Islamic University

Moderator



**9**  
December  
2016



**Prof. Dr. Ningsihanto S.H.,LLM**



**Dr. H. Aswadi Haidid S.H., M.H.**



**Drs. Madi S.H., MA**

**KEYNOTE SPEAKER**  
**Ir. Agus Rahardjo, MSM**  
*Chairman of the Corruption Eradication Commission (KPK), Indonesia*

This Conference And Call Paper was held by the Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on:

Day : THURSDAY

Date : December 9<sup>th</sup> 2016

Time : 08:00 - 15:00 pm

Place : Imam As Syafei Building 3<sup>rd</sup> Floor

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia

Jl. Raya Kaligawe Km. 4 PO. BOX.1054 Telp. (024) 6583584 Fax. (024) 6582455

Semarang 50112



# COMMITTEE OF THE INTERNATIONAL SEMINAR

## "COMPARATIVE LAW OF VARIOUS LAW SYSTEMS IN THE WORLD"

Responsible Person	: Dr. H. Jawade Hafidz.,S.H.,M.H	(Dean)
Advisory	: Dr. Munsharif Abdul Chalim.,S.H.,M.H	(Vice Dean I)
	Dr. Maryanto.,S.H.,M.H	(Vice Dean II)
	Prof. Dr. H. Gunarto.,S.H.,SE.,Akt.,M.Hum	(Head of PDIH)
	Dr. H. Ahmad Khisni.,S.H.,M.H	(Secretary of M.Kn)
	Dr. H. Djauhari.,S.H.,M.Hum	
	Dr.H. Umar Ma'ruf, SH.,Sp.N.,M.Hum	
	Dr.H. Amin Purnawan.,SH.,CN.,M.Hum	
	Dr. Rakhmat Bowo Suharto.,S.H.,M.H	
	Dr. H. Achmad Sulchan.,S.H.,M.H	
	Dr. Hj. Sukarmi.,S.H.,M.Hum	
	Dr. Hj. Sri Kusriyah.,S.H.,M.Hum	
	Dr. Hj. Widayati.,S.H.,MH	
Chairwoman	: Dr. Hj. Sri Endah Wahyuningsih,S.H,M.Hum	(Head of MIH)
Secretary	: Dr. Hj. Anis Mashdurohatun,S.H,M.Hum	(Secretary of PDIH)
Treasurer	: Dr. Latifah Hanim,S.H,M.Hum,M.Kn	(Head of M.Kn)
Drafting Team	: Hj. Aryani Witasari.,S.H.,M.H	
	Arpangi.,S.H.,M.H	
	Ira Alia Maerani,S.H,M.H	
	Jarot Jati Bagus, S.H, M.H	
Event Division	: Anita.,S.S.,M.H	
Secretariat and Supplies		
Division		
Coordinator	: M. Abdul Hadi.,SE	
Member	: Slamet Ariyanto	
	Dyan Teguh Aryanto, Amd	
	M. Ngaziz.,S.H.,M.H	
	Hendro Widodo.,S.H.,M.H	
Publication and		
Documentation Division	: Ikrom.,S.H	
Member	Achmad Jumeri Pamungkas.,S.Psi	
	Ahmad Mutohar.,S.H	
	Achmad Arifullah.,S.H.,M.H	
	Kustejo	
Consumption Division	: Latifah Rosdiyati.,S.E	
Member	Suharni	
	Siti Pardiyah	
	Laili Rohmah.,S.E	
	Laila Najihah.,S.H	
Receptionist	: Shinta Pratiwi	
	Riftia Anggita W.S.,S.H	
	Auliana	
Security	: Rohmani	
	Arif	
Driver	: Mashuri	
	Kusdi	
	Ismail	



## PREFACE

---

**Assalamu'alaikum, Wr. Wb**

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can provide this handbook without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers : (Prof. Simon Butt School of Law University of Sydney, Australia, Prof. Dr. Hikmahanto.,S.H.,LLM Professor of Faculty of Law Indonesian University, Siti Malikah Melek Feer Vrije Universiteit, Amsterdam, Dr. H. Jawade Hafidz, S.H., M.H The Dean of Faculty of Law, Sultan Agung Islamic University, Laras Susanti.,S.H., LLM PUKAT Gadjahmada of University.

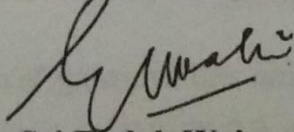
This is the second International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner to be discussed as guidelines for eradicating corruption in some countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

See you in the Third International and call for paper next year.

**Wassalamualaikum, Wr. Wb**

**Chairman of the Committee,**



**Dr. Sri Endah Wahyuningsih, S.H., M.Hum**

**NIDN : 0628046401**



## GREETING FROM THE DEAN OF FACULTY OF LAW

*As-salamu'alaikum Wr. Wb.*

Thank to Allah SWT is an absolute act that we must say after conducting the International Conference and Call for Paper by theme: "Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe" which is held by Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on December 09<sup>th</sup> 2016.

On December 9, the world will commemorate the International Day against Corruption. Warning World Anti-Corruption Day is celebrated every year since the United Nations Convention against Corruption issued on October 31, 2003. The purpose of the Anti-Corruption Day is exactly why the issuance of this convention which is to promote anti-corruption strategies more efficiently and effectively, facilitate international cooperation and technical assistance in the prevention and the eradication of corruption, and enhancing integrity, accountability and good management of public affairs (United Nations Convention against corruption).

Corruption now spread in all sector in our country, including in procurement of goods and services. Since, promulgation of Law No. 5 of 1999 concerning on Prohibition of Monopolistic Practices and Unfair Business Competition was released and the purpose of establishment of Law No. 5, 1999 generally aims to maintain the climate of healthy competition among businesses, and prevent monopolistic practices.

In connection with the indication of monopoly practices, there is also an assumption that it could have an impact that is not good against the bureaucracy in the government, because in it there is a hidden corruption and abuse of power to protect it. The statement contains a meaning, which behind the efforts of monopolistic practices there is a partnership that can not be "opened" between private business groups and bureaucrats who have economic interests. Indonesia fights for corruption and unfairness in conducting procurement of goods and services.

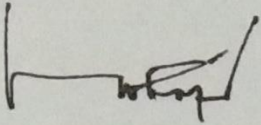
Thus, in order to celebrate the International Day against Corruption and Warning World Anti-Corruption Day, Faculty of Law, Sultan Agung Islamic University (UNISSULA) held an International Seminar and Call for Paper focusing on Indonesia Clean of Corruption in 2020.



Finally, we thank to the presenters, article senders, and comittee who have contributed in this event ,so that this international seminar ran well.

*Was-salamu'alaikum Wr. Wb.*

Semarang, December 09<sup>th</sup> 2016  
Dean,



**Dr. H. Jawade Hafidz, S.H., M.H.**

NIDN.062004670



## TABLE OF CONTENTS

---

Front Page .....	i
Information of the International Seminar .....	ii
Committee Composition .....	iii
Preface.....	iv
Greeting From The Dean Faculty of Law .....	vi
<b>INDONESIA'S KPK AND NSW'S ICAC: COMPARISONS AND CONTRASTS</b>	
Prof. Simon Butt .....	1
<b>CAN INDONESIA FREE ITSELF FROM CORRUPTION IN 2020?</b>	
Prof. Dr. Hikmahanto.,S.H.,LLM .....	4
<b>AN ACT TO ESTABLISH THE ANTI-CORRUPTION AGENCY, TO VEST POWERS ON OFFICERS OF THE AGENCY AND TO MAKE PROVISIONS CONNECTED THEREWITH.</b>	
Rohimi Shapiee.....	7
<b>STRATEGY TO CREATE INDONESIA FREE CORRUPTION IN 2020</b>	
Dr. Jawade Hafidz, S.H., M.H .....	11
<b>THE NETHERLANDS INGLOBA CORRUPTION</b>	
Siti Malikah Marlou Feer, M.A. ....	28
<b>ROBUST YET FRAGILE: EFFORTS IN COMBATING CORRUPTION IN INDONESIA</b>	
Laras Susanti.,S.H., LLM.....	33
<b>LEGAL STATUS OF AKTOR'S FOR CORRUPTION</b> <b>(In the Perspective of Islamic Law)</b>	
Sumarwoto Umar .....	37
<b>THE ROLE OF LAW IN THE POVERTY REDUCTION STRATEGY</b>	
Lantik Kusuma Aji .....	46
<b>THE INDEPENDENCY OF THE INSTITUTION FOR THE PROTECTION AND THE ESTABLISHMENT OF HUMAN RIGHTS TOWARDS THE GLOBALIZATION ERA 2020</b>	
Khalid .....	55
<b>THE URGENCY OF ANTI CORRUPTION EDUCATION FOR COLLEGES IN INDONESIA</b>	
Siska Diana Sari.....	62
<b>THE PROBLEMS OF DIVORCE IN CUMULATION AT THE RELIGIOUS COURTS BASED ON THE PRINCIPLES OF SIMPLE, FAST AND LOW COST</b>	
Elis Rahmahwati.....	78
<b>DISPARITIES DECISION RELATED TO INTERPRETATION OF ARTICLE 2 AND 3 CORRUPTION ERADICATION ACT</b>	
Agung Widodo.....	87
<b>DIVERSITY ADULT AGE LIMITS POSITIVE LAW IN INDONESIA</b> <b>(Studies in Multidisciplinary Perspective)</b>	
Muhammad Andri .....	102



<b>THE APPLICATION OF BALANCE IDEA IN SETTLEMENT OF DOCTOR MALPRACTICE CASE THROUGH PENAL MEDIATION</b> Yati Nurhayati.....	111
<b>MODERNIZATION LAW AS A CRIME CORRUPTION VERY EXCEPTIONAL THROUGH ENFORCEMENT OF ETHICS</b> Dr. Sukresno, SH, M.Hum .....	118
<b>CORRUPTION POTENCIES IN LAND USE POLICY (A Case Study in Kuningan Regency)</b> Haris Budiman .....	126
<b>CORRUPTION PREVENTION AND CONTROLS</b> INP Budiarta .....	133
<b>ISLAMIC LAW VALUES TRANSFORMATION IN THE RECONSTRUCTION OF THE LEGALITY PRINCIPLE OF INDONESIAN CRIMINAL CODE</b> Sri EndahWahyuningsih .....	145
<b>JUSTICE AND CHARITY IN JAKARTA’S NORTH COAST RECLAMATION PROCESS THAT WILL LEAD TO INDONESIA CLEAN OF CORRUPTION</b> Untoro .....	155
<b>CORRUPTION CRIMINAL SANCTIONS WITH VALUES OF JUSTICE-BASED</b> Zulfiani.....	162
<b>THE REFLECTION OF ISLAMIC BANKING IN THEORY AND PRACTICE</b> Anis Mashdurohatun .....	171
<b>THE IMPLEMENTATION OF LOCAL WISDOM SIRI’NA PACCE AS AN EFFORT OF CORRUPTION ERADICATION IN INDONESIA</b> Muh. Afif Mahfud .....	181
<b>DISCOURSE POLITICAL LAW IN INDONESIA ON A COMPLETATION OF PLATO PHILOSOPHY</b> Adrianus M. Nggoro,SH.,M.Pd.....	189
<b>STUDY OF INDONESIA’S PARTICIPATION IN ICSID</b> Agus Saiful Abib.....	202
<b>NOTARY ROLE IN THE IMPLEMENTATION OF EXECUTION PROCUREMENT OF GOODS AND SERVICES ARE FREE OF CORRUPTION BASED ON THE PRINCIPLE OF GOOD GOVERNANCE</b> Aris Yulia .....	211
<b>ANALYSIS WIRETAPPING AUTHORITY UPPER KPK LAW ENFORCEMENT IN THE PERSPECTIVE OF HUMAN RIGHTS</b> Ariyanto,SH.,MH.....	221
<b>SOCIAL WORKING PENALTY AS SOLUTION IN ERADICATING CORRUPTION IN INDONESIA</b> Desy Maryani.....	232
<b>LEGAL POLITICSOF EMPLOYMENT IN TERM OF PART OF TASK HANDOVER TO OTHER COMPANIES IN INDONESIA</b> Endah Pujiastuti.....	244



<b>RESOLUTION OF DISPUTES OF OUTSOURCING WORK FORCE IN THE COMPANY EMPLOYING OUTSOURCING SERVICE</b> Pupu Sriwulan Sumaya .....	256
<b>THE APPLICATION OF CORRUPTION LAW TO WARD CRIMINAL ACT IN THE FIELD OF FORESTRY</b> Ifrani .....	267
<b>THE EFFORTS OF ERADICATION OF CORRUPTION THROUGH INSTRUMENTS OF MONEY LAUNDERING LAW AND RETURN ACTORS' ASSETS</b> Yasmirah Mandasari Saragih.....	276
<b>AFFIRM ROLE OF EXISTENCE <i>RECHTSVERWERKING</i> TO ACHIEVING LEGAL CERTAINTY IN LAND REGISTRATION</b> Rofiq Iksamana, Setiono, I Gusti Ayu Ketut Rachmi Handayani, Oloan Sitorus.....	287
<b>ANTI-CORRUPTION EDUCATION AT AN EARLY AGE AS A STRATEGIC MOVE TO PREVENT CORRUPTION IN INDONESIA</b> Ida Musofiana.....	304
<b>FREED INDONESIA'S CORRUPTION BETWEEN HOPE AND REALITY</b> Dr. Tongat, SH., MHum., Said Noor Prasetyo, SH., MH.....	313
<b>UTILIZATION OF INDONESIA MARINE RESOURCES IN AN EFFORT TO REALIZE INDONESIA TOWARDS THE SHAFT OF THE MARITIME WORLD</b> Dr.Lathifah Hanim, SH.M.Hum., M.Kn. and Letkol (mar) MS.Noorman, S. Sos., M.Opsla.....	319
<b>POTENTIAL CORRUPTION IN THE VALIDATION POLICIES ON ACQUISITION TAX OF LAND AND OR BUILDING</b> Lilik Warsito.....	325
<b>THE EFFORT OF LAW ENFORCEMENT IN COMBATING CORRUPTION IN SOUTH SUMATERA</b> Sri Suatmiati.....	334
<b>ETHICAL PERSPECTIVE AND THE MAPPING OF NORM IN CORRUPTION ACT</b> Siti Zulaekhah.....	344
<b>AN EXPANSION OF CONCEPT THE STATE ECONOMIC LOSS IN CORRUPTION IN INDONESIA</b> Supriyanto, Hartiwiningsih, Supanto.....	354
<b>JURIDICAL STUDIES ON SUBSTANCE AND PROCEDURE OF THE DISMISSAL OF THE PRESIDENT AND/OR VICE-PRESIDENT AFTER THE REFORMATION</b> Siti Rodhiyah Dwi Istinah.....	364
<b>THE ROLE OF THE SHARIA SUPERVISORY BOARD IN THE FRAMEWORK ENFORCING SHARIA PRINCIPLES AT THE INSTITUTE OF ISLAMIC BANKING IN SEMARANG</b> Aryani Witasari.....	376
<b>SEMARANG CITY GOVERNMENT ROLE IN CONSERVATION AND ENVIRONMENTAL PROTECTION TO THE CAPITAL OF THE NATIONAL HERITAGE IN INDONESIA</b> Achmad J Pamungkas ( <i>Indonesia</i> ), Carlito Da Costa ( <i>Timor Leste</i> ) .....	390



<b>STUDYING THE WISDOM OF ZAKAT</b> Moch. Gatot Koco (Indonesia), Basuki R Suratno (Australia) .....	398
<b>HOMOLOGATION RECONSTRUCTION IN BANKRUPTCY THAT IS BASED ON DIGNIFIED JUSTICE</b> Agus Winoto .....	410
<b>RECONSTRUCTION OF EXECUTIVE AND LEGISLATIVE AUTHORITY IN MAKING GOOD GOVERNANCE (GOOD GOVERNANCE) VALUES BASED ON WELFARE</b> Mohamad Khamim .....	420
<b>THE TASK RECONSTRUCTION AND BPKP'S AUTHORITY IN THE CASE OF JUSTICE VAUE BASED CORRUPTION</b> Sarbudin Panjaitan .....	429
<b>THE RECONSTRUCTION OF MADLIYAH AND IDDAH MAINTENANCE AND MUT'AH IN DIVORCE CASE FOR JUSTICE AND WELFARE</b> Mustar .....	438
<b>JURIDICAL ANALYSIS OF THE ALLEGED CRIMINAL OFFENSE TO MANUFACTURE A NOTARY DEED</b> Subiyanto .....	446
<b>REVITALIZATION DEAL IN AKAD HYBRIDS IN SHARIA BANKING VALUE BASED ISLAMIC JUSTICE</b> Masduqi .....	452
<b>RECONSTRUCTION OF LEGAL PROTECTION DISTRICT HEAD IN THE ELECTION IMPLEMENTATION OF VALUE-BASED JUSTICE</b> Kukuh Sudarmanto Alugoro .....	462
<b>ABUSE OF AUTHORITY OFFENSE THEOLOGICAL RECONSTRUCTION LAW ERADICATION OF CORRUPTION (LAW NUMBER 31 OF 1999 JO. LAW NUMBER 20 OF 2001) BASED ON VALUE OF JUSTICE</b> As'adi M. Al-ma'ruf .....	472
<b>RECONSTRUCTION OF THE DAILY PAID WORK AGREEMENT IN THE EMPLOYMENT LAW BASED ON JUSTICE</b> Christina N M Tobing .....	479
<b>THE LAW AND THE IMPACT OF MARRIAGE SIRRI</b> Sahal Afhami .....	489
<b>CRIMES AGAINST CHILDREN AS ACTORS</b> Muhammad Cholil .....	503
<b>RECONSTRUCTION OF CRIMINAL PROCEDURAL LAW (KUHP) ABOUT THE DETENTION</b> Muhammad Khambali .....	512



<b>BASED ON JUSTICE PROBLEMS OF DISPUTE RESOLUTION REGIONAL CHIEF ELECTION (GOVERNOR, REGENTS AND MAYOR)</b>	
Esti Ningrum .....	520
<b>RECONSTRUCTION REGIONAL MINIMUM WAGE (UMR) IN RENEWAL OF EMPLOYMENT LEGAL REMEDIES BASED INDONESIA THE VALUE JUSTICE PANCASILA</b>	
Urip Giyono .....	531
<b>IMPLEMENTATION OF LAW AS TO MAINTAIN SECURITY IN THE CONTEXT OF PROFESSIONAL POLICE POLMAS (CASE STUDY IN LAMPUNG POLICE)</b>	
Muhammad Yaman .....	539
<b>RECONSTRUCTION OF CRIMINAL SANCTIONS PENAL CODE ACTORS ON ABORTION CRIME BASED ON THE VALUE OF JUSTICE</b>	
Hanuring Ayu Ardhani Putri .....	549
<b>REGISTRATION FIDUCIARY GUARANTEE REALIZE LEGAL PROTECTION OF CREDITORS AND DEBTOR</b>	
Ansharullah Ida .....	556
<b>RECONSTRUCTION OF LEGAL DISPUTES MEDIATION IN HEALTH CARE FOR PATIENTS HOSPITAL BASED ON THE VALUE OF JUSTICE</b>	
Teguh Anindito .....	569
<b>RECONSTRUCTION OF CRIMINAL SANCTIONS AGAINST CRIME OF ACTORS AND MURDER MURDER IN PLAN BASED ON VALUE OF JUSTICE CRIMINAL CODE</b>	
Maria Marghareta Titiek Pudji Angesti Rahayu Teguh Anindito .....	579
<b>IMPLEMENTATION OF PENAL MEDIATION IN CRIMINAL LAW</b>	
Aji Sudarmaji .....	587
<b>FAIR SETTLEMENT RECONSTRUCTION OF PROBLEMATIC CREDIT DISPUTE AT BANK RAKYAT INDONESIA (STUDY CASE AT MEDAN-SINGAMANGARAJA BRI BRANCH OFFICE)</b>	
Bachtiar Simatupang .....	594
<b>RECONSTRUCTION OF THE WASTE MANAGEMENT LAW BASED ON WELFARE VALUE</b>	
M. Hasyim Muallim .....	616
<b>RECONSTRUCTION LAW OF PUNISHMENT AGAINST CHILDREN NARCOTICS ABUSE-BASED PROGRESSIVE LAW</b>	
Salomo Ginting .....	625
<b>LEGAL PROTECTION PROBLEM OF WIFE AND CHILDREN OF POLYGAMY SIRRI IN INDONESIA</b>	
Muhlas .....	639



<b>IDEAL RECONSTRUCTION OF REHABILITATION PUNISHMENT FOR NARCOTICS ADDICTS AND ABUSER'S VICTIMS JUSTIFIED BASED ON THE LAW OF THE REPUBLIC OF INDONESIA NO. 35 YEAR 2009 (CASE STUDY IN SUMATERA UTARA PROVINCE)</b>	
Ahmad Zaini .....	648
<b>IMPLEMENTATION OF ACCELERATION SYSTEMATIC LAND REGISTRATION FULL IN HUMBANG HASUNDUTAN DISTRICT</b>	
Ruslan .....	658
<b>RECONSTRUCTION OF STATUS AND AUTHORITY OF THE SHARIA COURT IN THE NATIONAL JUDICIAL SYSTEM BASED ON JUSTICE</b>	
Jufri Ghalib .....	667
<b>RECONSTRUCTION OF LIABILITY NOTARY PUBLIC OFFICERS TO ACT AS A VALUE-BASED JUSTICE</b>	
Elpina .....	679
<b>RECONSTRUCTION OF CONSUMER PROTECTION LAW IN MAKING THE BALANCE BUSINESS BASED BUSINESS AND CONSUMER VALUE OF JUSTICE</b>	
Ramon Nofrial .....	693
<b>RECONSTRUCTION OF LAND USED RIGHT EIGENDOM VALUES BASED ON JUSTICE AND LEGAL CERTAINTY</b>	
Hakim Tua Harahap .....	706
<b>RECONSTRUCTION OF DIVERSION CONCEPT IN CHILD PROTECTION OF CONFLICT WITH THE LAWS BASED ON THE VALUE OF JUSTICE</b>	
Ulina Marbun .....	726
<b>RECONSTRUCTION OF PARATE EXECUTION MORTGAGE RIGHTS TO LAND BASED ON THE VALUE OF JUSTICE</b>	
Zaenal Arifin .....	740
<b>THE RECONSTRUCTION OF DIVORCE DUE TO MARITAL STATUS UNDER THE UNAUTHORIZED GUARDIAN AS VALUE OF JUSTICE</b>	
Abdul Kholiq .....	751
<b>THE RECONSTRUCTION OF LEGAL AID LAW FOR CHILDREN WHO GET CONFLICT WITH LAW IN PROCESS OF JUSTIFICATION FOR CHILDREN BASED ON THE VALUE OF PANCASILA</b>	
Adi Mansar .....	767
<b>MEDIATION RECONSTRUCTION AS ONE OF THE ALTERNATIVE SETTLEMENT OF DECLINE IN THE COURTS BASED ON THE VALUE OF JUSTICE (Study at the Simalungun District Court)</b>	
Mariah S.M. Purba .....	778
<b>POLYGAMIC POLICY IN INDONESIA (Analysis of Polygamic Arrangements and Practices 1959-2015)</b>	
Warman .....	790



<b>LAW ENFORCEMENT AGAINST CORRUPTION IN PERSPECTIVE OF HUMAN RIGHTS IN INDONESIA</b>	
Sekhroni .....	798
<b>THE PRINCIPLE OF NATURAL JUSTICE AND HUMAN'S RIGHT PROTECTION FOR CITIZENS IN ERADICATION OF CORRUPTION IN INDONESIA</b>	
Indriyana Dwi Mustikarini .....	809
<b>PREVENTING LAND MAFIA USING POSITIVE LAND REGISTRY SYSTEM</b>	
Bambang Sulistyo Widjanarko .....	816
<b>UNRULY PASSENGER IN AVIATION: THE REGULATIONS AND CASES IN INDONESIA</b>	
Adya Paramita Prabandari .....	826
<b>EDUCATION ANTI-CORRUPTION IN INDONESIA: PROBLEMS, CHALLENGES AND SOLUTIONS</b>	
Alwan Hadiyanto .....	839
<b>SPIRITUAL URGENCY OF RELIGIOUS AND EXPENSES OF EVIDENCE IN COMBATING CORRUPTION IN INDONESIA</b>	
Sulistiyowati .....	852
<b>SUE FOR THE STATE ADMINISTRATION OF JUSTICE IN INDONESIA</b>	
Sarjiyati .....	863
<b>CONSISTENCY MODEL OF COURT DESIGNATION TO FOSTER PARENT RIGHTS AUTHORITY DUE TO DIVORCE ON CHILDREN</b>	
Erna Trimartini .....	873
<b>AN INVESTIGATION AUTHORITY OF CRIMINAL ACT ON CORRUPTION IN CRIMINAL JUSTICE SYSTEM IN INDONESIA</b>	
Sukmareni .....	885
<b>PRO CONS THE EXISTENCE OF DEATH PENALTY IN CORRUPTION ACT OF 1999 IN INDONESIA</b>	
Anis Rifai .....	903
<b>PENAL MEDIATION IN SOLVING MEDICAL MALPRACTICE CASES AS AN ALTERNATIVE OF PENAL SANCTIONS BASED ON LOCAL WISDOM</b>	
Sri Setiawati .....	913
<b>SPECIAL PROTECTION OF CHILDREN IN CRIMINAL JUSTICE SYSTEM</b>	
Achmad Sulchan .....	922
<b>MORAL REFORM BUREAUCRACY AS PREVENTION OF ILLEGAL PAYMENTS TO INDONESIA CLEAN OF CORRUPTION</b>	
Herwin Sulistiyowati .....	932
<b>STANCE AND AUTHORITY OF PEOPLE'S CONSULTATIVE ASSEMBLY DURING REFORMATION ERA 1945</b>	
Ahmad Mujib Rohmat .....	944



**TAXES AND ALMS SEEN FROM ISLAMIC LAW**

Mohammad Solekhan ..... 954

**DIVERSION IN COURT (Case Studies in Karanganyar District Court)**

Anita Zulfiani ..... 964

International Seminar

Photos..... 971

## FREED INDONESIA'S CORRUPTION BETWEEN HOPE AND REALITY<sup>1</sup>

**Tongat, Said Noor Prasetyo**

Teachers in Criminal Law Faculty of Law University of Muhammadiyah Malang Jl. Raya  
Tlogomas No. 246 Malang, East Java, 65144

Email: tongat\_umm@yahoo.co.id, saidnoor@umm.ac.id

### A. INTRODUCTION

Although the title of this article implies pessimism, but semantically title of this article is not intended to convey the message of pessimism in fighting corruptions. The title of this article actually more of reflective questions in social achievement to provide confirmation, that the eradication of corruption in Indonesia is very likely just be the "hope", but also very likely to be "true". In condition of Indonesia today, expectations and reality in eradication of corruption can be considered equally still be a tendency. At least there are a series of facts that can be used as an argumentation for an existence of two point that tendencies.

*First*, looked from a time side, eradication of corruption in Indonesia actually started since Indonesian nation's has it independence. In embryonal, efforts to control corruption by means of criminal law has been started since 1958, with the Regulations of the Lord of War Centre Chief of Army Staff on April 16, 1958 Number Prt/Peperpu/013/1958 (BN No. 40 of 1958) which also applied for the residents within the jurisdiction of Navy through Decree the Chief of Naval Staff Number Prt/Z.1/I/7 dated April 17, 1958.<sup>2</sup> Nevertheless, the effort for eradicate corruption in Indonesia is still far from the public expectations. In perspective of time, an effort to eradicate corruption in Indonesia can be compared with Singapore. The eradication of corruption in Singapore also began in 1952 when the Investigation and Inspection Agency of Corruption (CPIB) was established with first 13 person staffs. Many challenges in early days of that agency stands. Their problem is not only limited to employees. This new institution was not also have a support from the public and the government. However, CPIB keep moving until finally Lee Kuan Yew govern and fully support it since 1959. That effort has brought Singapore became a

---

<sup>1</sup> Described in *International Conference and Call Paper* by title "Indonesian Clean of Corruption in 2020", held on December 9-10, 2016 at the Islamic University of Sultan Agung, Semarang.

<sup>2</sup> Looked at: Adami Chazawi, 2005, *Hukum Pidana Materiil dan Formil Korupsi di Indonesia*, Bayumedia, Malang, p. 3.



country with the lowest corruption rate in Asia. In fact, it is always on the list of 10 countries with the lowest corruption on earth.<sup>3</sup>

**Second**, social achievement that Indonesia will be free from corruption is certainly not impossible. Although it seems slowly, but the progress of eradication of corruption in Indonesia has improved. In 2015, a score from *Corruption Perception Index* (CPI) that Indonesia amounted to 36 and ranked at 88th out of 168 countries measured. Indonesia's score rose 2 points and up 19 ranking from the previous year. That increasing has not been able to match scores and rankings are owned by Malaysia (50), and Singapore (85), and slightly below Thailand (38). Indonesia is better than Philippines (35), Vietnam (31), and well above the Myanmar (22).<sup>4</sup> This leaning is certainly encouraging, because that is social achievement for free Indonesia from snares of corruption were not to be impossible things. As well as Singapore, Indonesia would have chance to be a country with freed from corruption or at least into countries with low levels of corruption.

**Third**, there is a paradoxes in eradication of corruption in Indonesia, so that reality of corruption would be anomalistic. **Firstly**, although the law enforcement against corruption continues to be made, but corruption still occurring with increasing quality and quantity continuesly. This reality shows that law enforcement corruption in disoriented occurring. This disorientation seen from not achieving important goals in law enforcement of corruption, namely "the general prevention" because of the low punishment imposed by judges.<sup>5</sup> Law enforcement of corruption punishment appears just be merely a "formal ritual", so it does not have prevensial effect. **Secondly**, although public attention to the cases of corruption so high, but "how to arbitrate" law enforcer in handling corruption cases seem very flat, linear and less progressive, thereby strengthening the suspicion there is a "flirt" between law enforcer and the perpetrators of corruption. This allegation, least

<sup>3</sup> <http://print.kompas.com/baca/politik/2015/10/13/Melihat-Pemberantasan-Korupsi-diSingapura-dan-Hon>, accessed on Monday, Desember 5, 2016 at 05.04 AM.

<sup>4</sup> <https://www.ti.or.id/index.php/publication/2016/01/27/corruption-perceptions-index-2015>, accessed on Sunday, Desember 4, 2016 at 15.51 PM.

<sup>5</sup> Theoretically one purpose of criminal punishment is to prevent repeat offender crime (*special prevention*) and prevent others from doing the same thing with offenders (*general prevention*). Check at: Andrew Ashworth, 2010, *Sentencing and Criminal Justice*, Fifth Edition, Cambridge University Press, Cambridge, UK, p. 78-83. Also check at :Shlomo Giora Shoham, Ori Beck, Martin Kett, 2008, *International Handbook of Penology and Criminal Justice*, CRC Press Taylor & Francis Group, USA, p. 352. By Sholmo, "Deterrence is commonly discussed in terms of general and specific deterrence (or prevention). Specific deterrence refers to the effects of a punishment on the punished person (e.g., the effects on his or her future actions), whereas general deterrence refers to the effects of the threat of punishment on the population at large". Also check at: Daniel E. Hall, 2009, *Criminal Law and Procedure*, Fifth Edition, Delmar, Cengage Learning, Clifton Park, New York, p. 28. Daniel said, "Specific deterrence seeks to deter individuals already convicted of crimes from committing crimes in the future. It is a negative reward theory. General deterrence attempts to deter all members of society from engaging in criminal activity".

by knowing "affair" of law enforcer with several perpetrators of corruption as in the case of Gayus Tambunan, the case of prosecutor Urip Tri Gunawan and the last—the most surprising—arrested Chief of Lawal Court Akil Mochtar in handling various cases of elections regional heads (Pemilukada). *Thirdly*, although the level of corruption in Indonesia is very high, but the growth rate of economic in Indonesia still the highest. Nevertheless, corruption anomaly is also still bring the peoples as "bearers" burden due to various acts of corruption that occurred.<sup>6</sup>

## B. JURIDICAL PROBLEMS IN LAW ENFORCEMENT OF CORRUPTION

Law enforcement—including law enforcement of corruption—essentially a process through the various stages—the stage of formulation/legislation, the application phase and the execution phase.<sup>7</sup> According to Barda Nawawi Arief, legislative process is the process of law enforcement *in abstracto*. Legislative process is early stages of the most strategic law enforcement *in concreto*, than the mistakes at this stage are strategic error that can become an obstacle to law enforcement *in concreto*.<sup>8</sup> Starting from such thoughts, talks about law enforcement of corruption in this paper will begin by discussing the substance of legislation that be a form basis for law enforcement of corruption, especially Law No. 31 of 1999 jo Law No. 20 of 2001. Juridical problems in law enforcement of corruption is a fundamental problem that contributed to emergence large problem of corruption in law enforcement as a whole, although in sociological issues have been neglected as a central issue.

One of juridical problems inherent in Law No. 31 of 1999 jo Law No. 20 of 2001 are issues of criminal formulation threats, both related to the severity of formulation regarding the kind of criminal or a criminal threatened. Although Law No. 20 of 2001 built on extraordinary spirit, but the spirit is not manifested in it formulation of criminal threat. Formulation of criminal threat in Law No. 31 of 1999 jo Law No. 20 of 2001 clearly exposed in following table.

<sup>6</sup> Tongat, Problem Akut Penegakan Hukum Tindak Pidana Korupsi dan Prospek Kebijakan Idealnya, Papers submitted in "Refleksi Akhir Tahun Mengurai Keburaman Hukum di Indonesia", organized by the Faculty of Law, University of Muhammadiyah Malang on December 5, 2013 at the Hall of BAU University of Muhammadiyah Malang.

<sup>7</sup> Check also: Barda Nawawi Arief, 2011, *Kapita Selekta Hukum Pidana tentang Sistem Peradilan Pidana Terpadu (Integrated Criminal Justice System)*, Badan Penerbit Universitas Diponegoro, Semarang, p. 18; Barda Nawawi Arief, 2009, *Tujuan dan Pedoman Pemidanaan Perspektif Pembaharuan Hukum Pidana dan Perbandingan Beberapa Negara*, Badan Penerbit Universitas Diponegoro, Semarang, p. 4.

<sup>8</sup> Barda Nawawi Arief, 2008, *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan*, Kencana Prenada Media Group, Jakarta, p. 25. Check also: Tongat, 2013, *Kendala Substansial dalam Penegakan Hukum Tindak Pidana Korupsi*, Pustaka Magister, Semarang, p. 5.



**Tabel 1. Heavy/ Slight Formulation System of Sanction in Law No. 31 of 1999  
jo Law No. 20 of 2001**

ART.	CRIMINAL THREATENED				
	Minimum Sanction		Maximum Sanction		
	Imprisonment	Fines	Death Penalty	Imprisonment	Fines
2 (1)	4 y and	200 M	-	LI or 20 y and	1 B
2 (2)	-	-	DP (specific circumstances)	-	-
3	1 y and/or	50 M	-	LI or 20 y and/or	1 B
5 (1)	1 y and/or	50 M	-	5 y and/or	250 M
5 (2)	1 y and/or	50 M	-	5 y and/or	250 M
6 (1)	3 y and	150 M	-	15 y and	750 M
6 (2)	3 y and	150 M	-	15 y and	750 M
7 (1)	2 y and/or	100 M	-	7 y and/or	350 M
7 (2)	2 y and/or	100 M	-	7 y and/or	350 M
8	3 y and	150 M	-	15 y and	750 M
9	1 y and	50 M	-	5 y and	250 M
10	2 y and	100 M	-	7 y and	350 M
11	1 y and/or	50 M	-	5 y and/or	250 M
12	4 y and	200 M	-	LI or 20 y and	1 M
12A (2)			-	3 y and	50 jt
12B (2)	4 y and	200 M	-	LI or 20 y and	1 M
13	-	-	-	3 y and/or	150 jt

**Explanation :**

D= Death Penalty

LI = Life Imprisonment (Life Imprisonment Penalty)

I = Imprisonment (Imprisonment Penalty)

F = Fines (Fines Penalty)

jt= juta (Million in IDR)

M = Milyar (Billion in IDR)

y = years

Noting at table 1 above readed clearly, that the extraordinary spirit in Law No. 31 of 1999 jo Law No. 20 of 2001 are not reflected in substance of sanctions setting. Formulation of criminal sanctions in both of legislation did not show as an extraordinary instrument, at least on some reasons:

*First*, the death penalty should be a punishment has an effect of deterrence/prevention—especially the general prevention—precisely placed as a specific

crime which can only be imposed in certain circumstances/emergency (vide Article 2 act (2) of Law No. 31 of 1999 jo Law No. 20 of 2001). This formulation—not only—resulting a death penalty loses it power as a means of general prevention, but also putting the death penalty merely just "decoration" in the legislation which is almost impossible to apply.

*Second*, although Law No. 31 of 1999 jo Law No. 20 of 2001 has been using the specific minimum and the specific maximum system as a reflection that can be a formulation system for particular criminal threats (*definite sentence*)—which in tradition of ordinary criminal law is used to formulate a criminal threat on type of heavy criminal act or serious criminal act—but with a really high range between minimum and maximum sanctions, that system is relatively not functioning optimally. Whereas, with formulation of that system thus remains the judges arbitrarily determine the standard of sanction. With the high range of minimum and maximum punishment, it has become a potential means of "deal-bargaining" in making decision of punishment.

*Third*, there are no special arrangements about fines penalty in Law No. 31 of 1999 jo Law No. 20 of 2001—which implies submission of legislation to provisions of fines in the Penal Code (KUHP)—giving unimpeded space to "rolling bad game" between executor institution with the corruptor. Even the threat of fines penalties are very high in Law No. 31 of 1999 jo Law No. 20 of 2001 to be a "toothless tiger" that many people questioned it executorial power. Remembering this, sanctions are substitute the fines penalties specified in Law 30 of Penal Code (KUHP) explored only six months in maximum limits, so no matter how much of the maximum fines penalty be given replaced with just six months.

Various juridical problems mentioned above not only has potential to become a kriminogen factor—which will continue to be a trigger of corruption—but also has potential obstacle to rule a law of enforcement, including to become a potential means for "love affair" between law enforcer with perpetrators of corruption. Therefore, messy of corruption law enforcement can not be solely seen as an errors or lacked of law enforcement officers, but also the shortcomings and errors of lawmakers. In the last statement would be a strategic error or omission which can be a followed error on the next steps. Various kinds of law enforcement problems are suspected to be a sizeable contributing factor a rampant of corruption until now.\*\*\*\*\*



## REFERENCES

- AdamiChazawi, 2005, *HukumPidanaMateriildanFormilKorupsi di Indonesia*, Bayumedia, Malang.
- Andrew Ashworth, 2010, *Sentencing and Criminal Justice*, Fifth Edition, Cambridge University Press, Cambridge, UK.
- Barda Nawawi Arief, 2008, *Masalah Penegakan Hukumdan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan*, Kencana Prenada Media Group, Jakarta.
- Barda Nawawi Arief, 2009, *Tujuan dan Pedoman Pemidanaan Perspektif Pembaharuan Hukum Pidana dan Perbandingan Beberapa Negara*, Badan Penerbit Universitas Diponegoro, Semarang.
- Barda Nawawi Arief, 2011, *Kapita Selekta Hukum Pidana tentang Sistem Peradilan Pidana Terpadu (Integrated Criminal Justice System)*, Badan Penerbit Universitas Diponegoro, Semarang.
- Daniel E. Hall, 2009, *Criminal Law and Procedure*, Fifth Edition, Delmar, Cengage Learning, Clifton Park, New York.
- EviHartanti, 2005, *Tindak Pidana Korupsi*, Sinar Grafika, Jakarta.
- Shlomo Giora Shoham, Ori Beck, Martin Kett, 2008, *International Handbook of Penology and Criminal Justice*, CRC Press Taylor & Francis Group, USA.
- Tongat, 2013, *Kendala Substansial dalam Penegakan Hukum Tindak Pidana Korupsi*, Pustaka Magister, Semarang.
- Tongat, Problem Akut Penegakan Hukum Tindak Pidana Korupsi dan Prospek Kebijakan Idealnya, Papers submitted in “Refleksi Akhir Tahun Mengurai Keburaman Hukum di Indonesia”, organized by the Faculty of Law, University of Muhammadiyah Malang on December 5, 2013 at the Hall of BAU University of Muhammadiyah Malang.
- <https://www.ti.or.id/index.php/publication/2016/01/27/corruption-perceptions-index-2015>.
- <http://print.kompas.com/baca/politik/2015/10/13/Melihat-Pemberantasan-Korupsi-di-Singapura-dan-Hon>.